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THE COMMONWEALTH.

KENTUCKY LEGISLATURE.

IN SENATE.

MONDAY, Feb. 27, 1860.

The Senate was opened with prayer by Rev. Jos. RAND, of the Methodist Church.

The reading of the Journal of Saturday was dispensed with.

A PETITION

Was presented by Mr. GLENN and appropriately referred.

REPORT OF A SELECT COMMITTEE.

Mr. DEHAVEN—Finance—asked to be dismissed from the petition of the Odd Fellows Hall Association of Covington, asking a release from taxes on their Hall property.

Mr. FISK opposed the discharge at length.—He explained the grounds of the application for the relief from taxes.

Mr. RHEA advocated the discharge; he explained at length the views of the committee. He thought the principle wrong; it was an indirect appropriation out of the Treasury. He thought this not as meritorious a case as the case of a widow lady of Todd county, against whose petition the committee were constrained by a sense of duty to report.

Mr. PENNEBAKER differed from Mr. RHEA, and opposed the discharge. He spoke at length in favor of the release of taxes to Odd Fellows, and explained their principles.

Mr. FISK again opposed the discharge briefly.

Mr. WHITAKER advocated the discharge of committee.

Mr. HAYCRAFT replied to Mr. WHITAKER and opposed the discharge.

The vote was then taken on the discharge of the committee, and it was decided in the affirmative by yeas, 13; nays, 8.

CONSTITUTIONAL QUESTION.

Mr. BRUNER asked a suspension of the rules to enable him to offer the following preamble and resolution.

Whereas, The Constitution provides that "a session of the General Assembly shall not continue beyond sixty days, except by a vote of two thirds of all the members elected to each House;" and whereas, by a joint resolution of the General Assembly the present session was extended beyond sixty days by a vote of two thirds of all the members elected to each House, and the time to which the session was extended expired the 24th of the present month, (February,) Wherefore,

Resolved as the opinion of the Senate, That the time the General Assembly could constitutionally set for legislative business expired on Friday, the 24th February, 1860.

The Senate refused to suspend the rules by a vote of yeas, 12; nays, 13.

MOTION TO RECONSIDER.

Mr. ANDREWS moved to reconsider the vote rejecting a "H. R. bill in relation to the future mode of proceedings in obtaining tavern licenses;" motion entered.

REPORTS RESUMED.

Mr. DEHAVEN—Finance—a H. R. bill for the benefit of H. Lewis deceased: passed.

Same—a H. R. bill for the benefit of A. J. Mershon's securities of Rockcastle county, with the opinion it should not pass: placed in the order of the day.

Mr. SPEAKER (Porter) advocated the bill at length.

Mr. WHITAKER wished to examine authorities, and moved to postpone the bill until to-morrow at 9 1/2 o'clock.

The Speaker (Mr. CISELL) in the chair decided the motion out of order.

Mr. PENNEBAKER opposed the bill at length, he thought the principle involved in this bill unprecedented and wrong, and he had no doubt was unconstitutional, being an *ex post facto* law.

Mr. WHITAKER moved to refer the bill to the committee on Revised Statutes to report to-morrow at 10 o'clock.

Mr. WHITAKER moved the motion to commit, and advocated the bill at length; he thought there was no doubt of the Constitutionality of the bill.

Mr. DEHAVEN replied to Mr. PENNEBAKER on the question of *ex post facto* laws.

Mr. ANDREWS opposed the bill briefly; he was opposed to the policy of interfering with the principle of acts of limitation involved in this case.

Mr. WHITAKER addressed the Senate in favor of the motion to recommit. He wished to commit because the Senate had refused to postpone to 10 to-morrow; his motion to postpone to 9 1/2 o'clock was declared out of order. He opposed the bill if a vote was pressed now.

Mr. GIBSON moved the previous question: ordered.

The question was then taken on recommitting with instructions to report to-morrow at 10 o'clock, and it was decided in the negative—yeas, 11; nays, 16.

Mr. WALTON moved the previous question: ordered by yeas, 17; nays, 11.

Mr. PENNEBAKER raised the question that it required five fifths to carry the previous question.

The Speaker (Mr. CISELL) in the chair decided that only a majority was required.

Mr. PENNEBAKER appealed.

The vote was taken shall the decision of the chair stand as the decision of the Senate, and it was decided in the affirmative by yeas, 24; nays, 1.

The bill was then passed by yeas, 17; nays, 11.

2D SPECIAL ORDER.

A H. R. bill to provide a more efficient Police for the city of Louisville was taken up.

An amendment had been offered by the committee who reported it providing "that if the Chancellor shall fail to perform the duties imposed by the bill, the Governor shall exercise the power conferred on the Chancellor."

Mr. ANDREWS opposed the bill briefly.

Mr. ALEXANDER moved an amendment to the amendment providing that the provisions of the bill shall apply to the cities of Lexington and Covington.

Mr. ALEXANDER opposed the bill on the ground that the bill was not asked for by petition, so far he had ever heard, and was largely proposed against citizens of Louisville.

Mr. FISK replied to Mr. ALEXANDER, and exhibited petitions which he said asked for this law; they never had been publicly exhibited before. He advocated the bill.

Mr. WHITAKER replied to Mr. FISK. He said those petitions had never been presented in any authentic form before the Senate or the committee before whom the bill was; they knew nothing of them. He opposed the bill.

Action on the bill was cut off by the hour for the

ORDERS OF THE DAY.

A H. R. bill to charter the Henderson's Savings Institution was taken up.

Mr. GROVER offered an amendment, making the stockholders individually liable for all the debts of the institution as partners are now liable by law; also fixing a tax of 50 cents on the \$100 of stock: adopted.

The bill was then rejected by a tie vote of 11 to 11.

IN HOUSE OF REPRESENTATIVES.

A H. R. bill to charter the City Bank of Henderson—referred to the Finance committee.

A H. R. bill for the benefit of A. J. Mershon's securities of Rockcastle county—rejected.

MOTION TO RECONSIDER.

Mr. GIBSON moved to reconsider the vote rejecting the "bill to charter the Henderson Savings Institution"—reconsidered.

H. R. BILLS PASSED AND REJECTED, &c.

A bill to authorize persons confined in jail for fines to repley the same before circuit court clerks—passed.

A bill in relation to Caveats—passed.

A bill in relation to the duties of clerks of courts—referred to Judiciary committee.

A bill to regulate the circuit courts in the 3d judicial district—passed.

A bill to allow Ohio county court to levy an additional advalorem tax—passed.

A bill for the benefit of Dickey & Thomas, of Edmundson county—referred to the committee on Proprieties and Grievances.

A bill to amend the charter of the Lancaster and Crab Orchard turnpike—passed.

A bill to amend the charter of the Paint Lick and Walla Mill turnpike road company—passed.

A bill to prescribe the times of the spring and summer terms of the Franklin circuit court—placed in the orders of the day.

A bill to charter Vienna Division, No. 286, S. of T., in Clarke county—passed.

A bill to amend the charter of the Lexington and Frankfort turnpike extension company—passed.

A bill in relation to the town of Greenup—passed.

A bill authorizing the Taylor county court to fix the times of justice's courts in said county—passed.

A bill to amend the charter of the town of Monticello in Wayne county.

Before action the Senate took a recess until 3 o'clock.

EVENING SESSION.

The H. R. bill to amend the charter of the town of Monticello, (being the business before the Senate when the recess was taken,) was again taken up.

Mr. ANDREWS resumed his remarks on the bill, and moved to refer the bill to the committee on County Courts—carried.

A H. R. bill to charter the Kiddville turnpike road company—passed.

A H. R. bill to repeat the act to prevent the destruction of fish in Little River—passed.

A H. R. bill to amend the charter of the Millersburg and Cane Ridge turnpike company—passed.

A H. R. bill for the benefit of the town of Burlington, in Boone county—passed.

A H. R. bill in relation to the road from Union to Rabbit Hash, in Boone county—passed.

A H. R. bill to charter the Big Spring and West Point turnpike company—passed.

A H. R. bill to change the line of district No. 1, in Harrison county—passed.

A H. R. bill to charter J. F. K. Keel Lodge of F. and A. Masons—passed.

A H. R. bill for the benefit of Fayette county—passed.

A H. R. bill to authorize judges of county courts of the counties of Henderson, Hopkins and Union to change precincts—passed.

A H. R. bill to amend the act for the benefit of John M. Johnson and S. L. Singletary—passed.

A H. R. bill to authorize the Hickman county court to establish another district in said county—passed.

A H. R. bill to charter the Deposit Bank of Madisonville—referred to the Finance committee.

A H. R. bill for the benefit of John Walden, of Estill county. [\$135 for sheriff and one guard to take a lunatic to the Asylum by order of court]—passed by yeas, 24; nays, 1.

A H. R. bill to authorize the appointment of a deputy clerk at Columbus, and to define his duties—passed.

A H. R. bill to legalize the election of mayor and council of Hickman, and change the time of election—passed.

A H. R. bill for the benefit of Alfred Sturges, of Hardin county—passed.

A H. R. bill for the benefit of L. F. Andrews, of Graves county—passed.

A H. R. bill for the benefit of John F. Keel Lodge of F. and A. Masons—passed.

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THE COMMONWEALTH.
FRANKFORT.

THOMAS M. GREEN, Editor.

TUESDAY, FEBRUARY 28, 1860.

A Nice Operation by a Democratic, Officeholder.

During the year 1858 the Auditor issued a warrant to Judge Nuttall for his salary as Circuit Judge, which was presented to Mr. Garrard, as Treasurer, for payment. He refused to pay it upon the ground that a deduction should have been made by the Auditor for a certain sum that had been paid to a *pro tem* Judge. The Treasurer called upon the Attorney General for advice as to his (Treasurer's) duty in the premises. The Attorney General gave it as his opinion that the Treasurer ought to pay it; that he had no power to revise the act of the Auditor; and that, in point of law, Judge Nuttall was legally entitled to the money. The Treasurer assumed the right of forming his own opinion as to his official duty, and refused to conform his official action to the advice given to him by the Attorney General, and still refused to pay the warrant. And thereupon Judge Nuttall proceeded against Mr. Garrard by mandamus. The Circuit Court awarded a peremptory mandamus, and Garrard appealed. The Court of Appeals affirmed the judgment of the Circuit Court, with costs. Mr. Garrard appealed to the present Legislature to be reimbursed for the costs he had expended in resisting the opinions of the Attorney General and the courts, amounting to sixty or eighty dollars, and an act has passed giving him the money.

The office of Attorney General is created mainly to give the Executive officers legal opinions as to the discharge of their duties, and the law makes it the duty of the officer to be governed by the opinion so given; but Mr. Garrard, assuming to be more conversant with the law than the Attorney General, disregarded his opinion, resisted the payment of "just claim, and then calls upon the Legislature to foot the bill, which has been done.

It is a dangerous precedent, revolutionary in its principles, and will be followed by other officers, to the great loss of the public treasury. And what is the reward Mr. Garrard asks of the Legislature for resisting the law? It is to raise his salary from \$1,700 to \$2,000, and to give him a clerk with a salary of \$500.

The infamous bill which was concocted by the Locofofo leaders of this county, by which it is re-districted, and under which many of our citizens who live in sight of and near to our city, will be compelled to go from 7 to 10 miles into the country to vote, passed the House of Representatives yesterday, and of course will become a law. No one need now doubt that Locofofo leaders can go down to the lowest depths of meanness to accomplish the base ends of party. The outrage inflicted by that bill upon many of our citizens is unparalleled in the history of Kentucky legislation. We shall have more to say of it hereafter.

The thanks of every Opposition citizen of Franklin county are due to our able Representative for the bold and vigorous opposition made by him to that iniquitous bill. He demonstrated its unfairness to every candid man. But it did no good. It was a foregone conclusion. Party interests must be and were subserved.

Decision of the Court of Appeals.

Reported expressly for the Commonwealth by John M. Brown, Attorney-at-Law, Frankfort, Ky.

WHITEHEAD ET AL. vs. From the Carroll Circuit. Root & Co. et al.

The appellees being, as appears from the record, distillers, and engaged at the time in the manufacture of whisky at their distillery, contracted with appellants to deliver at any time within twelve months from date "ten thousand dollars worth of whisky at twenty-one cents per gallon." In an action against appellees for not complying with the contract, they answer, stating that the whisky, the subject of the contract, not being in issue at the date thereof, the contract was void. Appellants demurred to this as well as the second and fifth paragraphs of the answer; and the demur to each paragraph being overruled by the court below, they elected to stand by the demur to the first paragraph, and have brought the case here.

Judge DUVALL delivered the opinion.

If the case of *Bryan vs. Lewis*, the doctrine in which was directly overruled in the case of *Hebblewhite vs. McMoriem*, 5 M. and W., 462, were conceded to be authority at the present day, the case under consideration is not within either its facts or its principles.

All the authorities concur in laying down, and this court, in the case of *Wheeler vs. Wheeler*, decided at the present term, recognize the rule that there can no valid sale unless the thing sold has either an actual or potential existence at the time of the sale. (*Kent's Com.; Blackstone's Com.; Chitty on Contracts*, p. 418.)

But neither the rule itself, nor the reason on which it is founded, has any application to the case under consideration. The contract here must be regarded as a special or ex parte agreement for the sale and delivery of \$10,000 worth of whisky. That such was the intention of the parties is manifest upon the face of the instrument. The vendors were engaged at the time the contract was entered into in the manufacture of whisky. The subject of the contract was whisky to be delivered at any time within twelve months from date. No specific lot of whisky is referred to, nor do the terms of the writing authorize the inference that the whisky was then on hand, or had been set apart, or had been even then manufactured by the vendors, or that it was so understood at the time the contract was executed. On the contrary the most reasonable and natural construction of the agreement, giving proper effect to all its parts, is that the whisky was to be thereafter manufactured, and to be delivered at the time and in the manner stipulated.

In the failure to distinguish between these two distinct classes of contracts, expressly recognized in *Parsons on Contracts*, 1 vol. p. 439, and *Wheeler vs. Wheeler* and other authorities, supposes the fallacy of the whole argument by which it is attempted to prove that the contract before us is invalid and not enforceable.

It follows that the facts set forth in the first paragraph of the answer, presented no valid defense to the action, and the court erred in overruling the demur to the same.

We are of opinion that the demur to the second and third paragraphs was properly overruled. The allegation that the writing sued on was obtained from the defendants by fraud, covin, and misrepresentation of the plaintiff is the averment of a substantive and traversable fact. This was repeatedly held to be a good plea before the adoption of the code, and there is nothing in the section referred to, (see 175,) which can be construed as operating to change the law in this particular.

The fifth paragraph, although it contains a large amount of useless matter, yet sets forth a state of fact which, if true, must be deemed sufficient to defeat the action. As the first paragraph is held to present no sufficient defense to the action, the plaintiff's will of course be entitled to a trial of the issues made by the second and fifth paragraphs. They were not bound, or even allowed, by the code to reply, but the facts stated in those paragraphs stood controverted by law.

For the error mentioned the judgment is *reversed*, and the cause remanded, with directions to sustain the demur to the first paragraph of the answer, and for further proceedings not inconsistent with this opinion.

Judgment is affirmed upon the cross appeal of Root & Co.

Speeches of Messrs. Sherrill, Cleary and Goodloe, in the House of Representatives, on the announcement of the Death of Hon. John G. Lyons.

Mr. SHERRILL said:

Mr. SPEAKER—With sadness and sorrow I arise in my place to add my share of tribute to the memory of John G. Lyons, so recently an honorable and honored Senator from the city of Louisville. Where is he now? Sir, he is gone to that bright world beyond the confines of time; "gathered to his Fathers" in that mansion beyond the skies, where all good men hope at last to arrive.

Mr. Speaker, who and what was John G. Lyons. He was an honorable, high-toned, sensible and dignified gentleman; a Christian and a patriot. Aye, sir, he was "a good man" and when I say he was "a good man" I want to be understood as meaning that he was entitled to the epithet of "good man" in its broadest and most significant sense. Mr. Speaker, I think that I knew Mr. Lyons well; having served with him in the board of school trustees of the city of Louisville; and having been associated with him for over one year, I had an opportunity of discovering his excellency. He was a man, sir, of the noblest impulses—every thing that could make the Christian, the patriot, and the philanthropist. Mr. Speaker, he is gone to another country beyond the shores of time; to that glorious country where the great I Am receives the anthems and praises of the countless thousands that make up the heavenly family.

In conclusion, allow me to say I hope that we will all be able to profit by this dispensation of the great Jehovah, and that when we are called to our last account, we may leave behind us as much evidence of our worth as citizens as did Mr. Lyons. Mr. Speaker, I can say no more than to invoke the blessings of heaven upon his bereft and stricken family and friends.

On the 9th inst., at the residence of T. A. Berryman, in Owenton, Ky., after a long and painful illness, Mr. George M. MERRILL, in the 36th year of his age.

New York and Philadelphia papers will please copy.

We cannot too often impress upon mothers the great advantages to be derived from the use of Dr. John Bull's Vegetable Worm Destroyer. Put up as they are in the form of candy, children eat them with avidity, and the destruction of the worms is certain, and that, too, without injury to the health of the child.

The splendid specimens of Photographic art, on exhibition at Harris' Gallery, over the Post office, attract large numbers of visitors. The style and finish of these pictures is superior to any ever seen in Frankfort.

We are authorized to announce HARRY L. TOWN as a candidate for Sheriff of Franklin county at the August election, 1860.

MARRIED.

At Baltimore city, on the 20th instant, by the Rev. Dr. Eloway, CHAS. B. GETZ to Miss Rose SEIGERWALD.

DIED.

At his residence, in Frankfort, Kentucky, on the 21st day of February, 1860, EDWARD S. COLEMAN, aged 73 years, 8 months, 27 days.

The deceased was a native of Virginia; was born in Orange county in that State, on the 24th day of May, 1786, and emigrated to Kentucky with his father and family about the year 1795. In the year 1806 he settled in South Frankfort, and continued to reside there until his death.

The subject of this notice was, at the time of his death, one of the oldest citizens of Frankfort—there being now but few left who were here when he reared his log cabin in the dense forest which covered the ground upon which the city now stands. From then till now he pursued the tenor of life's uneven way, battling with its adversities, but ever maintaining a moral reputation unsullied and unimpeachable. As a man and a citizen he was extensively known and highly respected—a kind neighbor, an affectionate husband, a devoted father, beloved and esteemed by all, and most by those who knew him best.

On the 26th of January last his aged and much respected wife departed this life, and in less than one short month God also called him home. His life, like that of others, was interspersed with its sunshine and shadow, its joys and its sorrows. At last the journey is ended, and he is taken from labor to rest, and to enjoy, as we trust, a sweet repose.

Where the golden streets are shining.

By the streams of living waters,

By the burning throne of glory,

There is rest at home.

Mr. SPEAKER—With sadness and sorrow I arise in my place to add my share of tribute to the memory of John G. Lyons, so recently an honorable and honored Senator from the city of Louisville. Where is he now? Sir, he is gone to that bright world beyond the confines of time; "gathered to his Fathers" in that mansion beyond the skies, where all good men hope at last to arrive.

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New York and Philadelphia papers will please copy.

LOUISVILLE THEATER.

FIRST NIGHT OF THE

NEAT LEDGER ROMANCE.

WRITTEN BY

Mrs. E. D. E. N. SOUTHWORTH.

ENTITLED THE

DOOM OF DEVILLE.

Dramatised by Robert Jones, Esq.

Meets at their Hall, on St. Clair Street, over Page, Gaines & Page's Grocery Store, in the Third Story, every

Tuesday Evening, at 7 o'clock. Transient members in

good standing are fraternally invited to attend. En-

trance to the Hall, one door below Page, Gaines &

Page's Grocery Store. By order of the Lodge.

Dec. 2, 1860—3m.

JOHN W. PRUITT, Sec'y.

MASONIC NOTICE.

Hiram Lodge, No. 4, meets on the Second and

Fourth Monday Evenings in each month, at 7 o'clock. P.

M., in their Lodge room in the Third Story over Page, Gaines & Page's Grocery Store, adjoining the Com-

monwealth Office, on Saint Clair Street.

Members of the Legislature who are Masons, and other visiting Brethren, are cordially invited to attend the meetings. By order of the Lodge.

Dec. 2, 1859—1m.

G. W. LEWIS, Secretary.

FOR SALE.

A tract of land of about two hundred acres, on the Kentucky river, 3 miles from Frankfort, and 1/2 of a mile from the Owen turnpike. Finely timbered, well watered, and the soil excellent. Twenty-five acres cleared; the improvements indifferent. For particulars refer to

PHILIP SWIGERT, Esq., or

ALBERT BACON, Esq.

February 27, 1860—1m.

J. S. & L. E. HARVEY.

L. O. O. F.

Phoenix Lodge, No. 28, I. O. O. F.,

Meets at their Hall, on St. Clair Street, over Page,

Gaines & Page's Grocery Store, in the Third Story,

every Tuesday Evening, at 7 o'clock.

Transient members in

good standing are fraternally invited to attend. En-

trance to the Hall, one door below Page, Gaines &

Page's Grocery Store. By order of the Lodge.

Dec. 2, 1860—3m.

JOHN W. PRUITT, Sec'y.

MILLINERY AND FANCY GOODS!!

MRS. F. T. LYONS & CO.,

Saint Clair Street, Frankfort, Ky.,

Have just received and opened a full and large assort-

ment of Fashionable Fall and Winter Millinery Goods.

The new stock embraces Cloaks, Points, Bonnets, Head-dresses, Caps, &c., &c., all of the latest

styles and fashions.

Don't send to Louisville or Lexington when you can

get what you want equally as elegant and far cheaper at home. Call and see.

Mrs. F. T. LYONS & CO.

Also Agents for WHEELER & WILSON'S Un-

rivaled Sewing Machines.

Feb. 23, 1860—1w.

WM. DODD & CO.

Manufacturers and Wholesale Dealers,

No. 144 Main Street, 3 doors below Fourth,

CINCINNATI, OHIO.

YOUNG GENTLEMEN

WANTING SOMETHING EXTRA IN THE WAY

OF A

Handsome Cloth Cap or Dress Hat,

SAM. C. BULLS,

Hot and Bookstore, St. Clair Street,

Sept. 23, 1859—1w.

W. L. LEWIS, Sec'y.

